

TITLE 4. BUSINESS REGULATIONS

NOTICE OF PROPOSED RULEMAKING

The California Pollution Control Financing Authority (the “Authority”), organized and operating pursuant to Sections 44500 through 44563 of the California Health and Safety Code proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

Proposed Regulatory Action

The Authority proposes to amend Sections 8070, 8071, 8072, 8073, 8074, and 8076 of Title 4 of the California Code of Regulations (the “Amended Capital Access Regulations”) concerning the administration of the Capital Access Loan Program authorized by Section 44559 of the Health and Safety Code (the “Program”). These regulations will be adopted on an emergency basis in December 2005. The current rulemaking action would make these changes permanent.

Authority and Reference

Authority: Sections 44520(a) and 44559.5(f) of the Act authorize the Authority to adopt necessary regulations relating to the Capital Access Loan Program established by the Act CalCAP).

Reference: Sections 44559-44559.9 of the Health and Safety Code. These amended regulations implement, interpret and make specific Sections of the Act by amending Sections 8070, 8071, 8072, 8073, 8074, and 8076 of Title 4, Division 11, Article 7 of the California Code of Regulations.

Informative Digest/Policy Statement Overview

Existing law establishes the Capital Access Loan Program and authorizes the Authority to contract with specified financial institutions to make loans to eligible small businesses that fall just outside of most conventional underwriting standards. (Health and Safety Code, § 44559.2.)

Under existing law, borrowers and lenders must pay a fee on CalCAP loans to the lender’s loss reserve account. (Health and Safety Code, § 44559.3.) The Authority matches the fees paid to the loss reserve account at 100 percent or 150 percent. (Health and Safety Code, § 44559.4(d).) The funds held in the lender’s loss reserve account are the sole property of the Authority and are used to cover losses on any loan that the lender has enrolled in CalCAP. (Health and Safety Code, § 44559.5.)

The proposed amendments make clarifying changes to existing regulations that implement the CalCAP program. These amendments are the result of periodic evaluation of the regulations and issues encountered during specific loan transactions. The proposed amendments and objectives for each section are as follows:

Section 8070. The existing regulation defines the term “fees” to include fees paid by borrowers and lenders to the lender’s loss reserve account pursuant to a specific formula. The proposed revision to this regulation clarifies that a borrower may pay its share of the fees by rolling the fees into the total amount of the CalCAP loan. The second amendment to this regulation would remove duplicative language governing the permissive use of Independent Contributor financing. Subdivision (f) of the existing regulation sufficiently specifies the eligible uses of Independent Contributor financing.

Section 8071. Subdivision (a)(9) of the existing regulation requires a financial institution that participates in the CalCAP program to complete an application that, among other things, permits the Authority to audit the records of the financial institution. The proposed revision clarifies that the Authority may perform the audit on the premises of the financial institution, whether or not the institution is a credit union, bank, community development financial institution, or other qualified lender.

Section 8072. The proposed revision to subdivision (c)(2) of the existing regulation changes “NAIC code” to “NAICS code.” The acronym refers to the North American Industry Classification System, the current business trade code system. Regarding the second revision to this regulation, existing federal and state laws outside of the CalCAP program impose restrictions on insider transactions by lenders. Proposed revisions to subdivision (e) of the regulation set forth cross-references to many of these restrictions for purposes of providing guidance and clarification to participating lenders.

Section 8073. The existing regulation requires loss reserve accounts to be insured by the Federal Deposit Insurance Corporation (FDIC) or Securities Investor Protection Corporation. The proposed revision clarifies that loss reserve accounts held by participating credit unions must be insured by the National Credit Union Share Insurance Fund (NCUSIF). NCUSIF is a division of the National Credit Union Association, a federal agency, and is similar to the deposit insurance provided by the FDIC.

Section 8074. The existing regulation sets forth procedures to be used when a CalCAP borrower defaults on a loan and a participating lender seeks reimbursement from the lender’s loss reserve account. In some cases, only a portion of a loan from a lender to an eligible borrower is enrolled in the CalCAP program. The proposed revision to subdivision (b) of the regulation clarifies that when a borrower defaults on a loan enrolled in the CalCAP program, the lender may only seek reimbursement for that portion of the loan enrolled in the CalCAP program, not for the entire amount of the loan. The second revision in subdivision (d)(7) would correct a grammatical error and delete the duplicative word “of”.

Section 8076. Subdivision (c)(1) of the existing regulation permits the Executive Director of the Authority to terminate a lender’s participation in the CalCAP program if the lender becomes the subject of specified enforcement-type proceedings. The proposed revision to

subdivision (c)(1) clarifies that termination may occur if the lender becomes the subject of *any* action by a regulatory agency and the action may impair the ability of the lender to participate in the CalCAP program.

Disclosures Regarding the Proposed Action

The Executive Director of the Authority has made the following determinations regarding the effect of the Amended Capital Access Regulations:

Mandate on local agencies or school districts: None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17561: None.

Other non-discretionary cost or savings imposed on local agencies: None.

Cost or savings to any state agency: None.

Cost or savings in federal funding to the state: None.

Significant effect on housing costs: None

Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: The Authority has made an initial determination that the Amended Capital Access Regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Assessment regarding effect on jobs/businesses: The Amended Capital Access Regulations will not create or eliminate jobs within California, create new businesses or eliminate existing businesses within California, or affect the expansion of businesses currently doing business within California.

Cost impact on a representative private person or business and effect on small business: The Amended Capital Access Regulations will clarify in regulation the existing practice that small business Program loan applicants may alternatively finance the required contribution to the loss reserve account, typically 2 percent of the loan amount, from the proceeds of their loan. The Authority is not aware of any other specific expenditure that a representative private person or business would necessarily incur in reasonable compliance with the Amended Capital Access Regulations.

Consideration of Alternatives

In accordance with Section 11346.5(a)(13) of the Government Code, the Authority must determine that no reasonable alternative to the Amended Capital Access

Regulations considered by the Authority or that have otherwise been identified and brought to the attention of the Authority would be more effective in carrying out the purpose for which the Amended Capital Access Regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Authority invites interested persons to present statements with respect to alternatives to the Amended Capital Access Regulations during the written comment period.

Agency Contact Person

Written comments, inquiries and any questions regarding the substance of the Amended Capital Access Regulations shall be submitted or directed to:

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Sacramento, California 95814
Telephone: (916) 654-5610
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The back up contact person is:

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Availability of Initial Statement of Reasons and Text of the Proposed Regulations

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 915 Capitol Mall, Room 457, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the Amended Capital Access Regulations. Copies of these items are available upon request from the Agency Contact Person designated in this Notice or at the Authority's website located at <http://www.treasurer.ca.gov/cpcfai/>.

Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the Amended Capital Access Regulations to the Authority. The written comment period on the Amended Capital Access Regulations ends at **5:00 p.m. on February 14, 2006**. All comments must be submitted in writing to the Agency Contact Person identified in this Notice by that time in order for them to be considered by the Authority. In the event that changes are made to the Amended Capital Access Regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified Amended Capital Access Regulations for fifteen (15) calendar days after the date on which such Amended Capital Access Regulations, as changed or modified, are made available to the public pursuant to Title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency Contact Person identified in this Notice.

Public Hearing

No public hearing regarding the Amended Capital Access Regulations has been scheduled. Anyone wishing a public hearing must submit a request in writing, pursuant to Section 11346.8 of the Government Code, to the Authority at least fifteen (15) calendar days before the end of the written comment period. Such request should be addressed to the Agency Contact Person identified in this Notice and should specify the Amended Capital Access Regulations for which the hearing is being requested.

Availability of Changed or Modified Text

After the written comment period ends and following a public hearing, if any is requested pursuant to Section 11346.8 of the Government Code, the Authority may adopt the Amended Capital Access Regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least fifteen (15) calendar days before the Authority adopts the proposed Amended Capital Access Regulations, as modified. Inquiries about and requests for copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice. The Authority will accept written comments on the modified regulations for fifteen (15) calendar days after the date on which they are made available.

Availability of Final Statement of Reasons

Upon completion, a copy of the Final Statement of Reasons may be requested from the Agency Contact Person designated in this Notice or at the Authority's website at <http://www.treasurer.ca.gov/cpcfa/>.